

PRESENTATION TO ZONING REFORM WORKING GROUP

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I have wrestled with developing a response to the subject of, “what factors should be considered in establishing the location and size of “appropriate areas”housing” and feel that trying to address it at this point in time is premature.

I think that we are not yet beyond the basic philosophical stage between the differing interests among the groups in our meetings. From my perspective those from the planning & community side of the world honestly believe that the solution to fixing 40A is to create tools that place more power in their hands as evidenced both by their statements and by the structure of CPA II.

I personally disagree. Study after study – I have a shelf full of them going back to 1989 – clearly defines the problems related to sprawl, lack of a variety of forms of housing and housing affordability to inconsistent and excessive local regulation. Economic development too has been constrained by zoning, permitting and appeals processes that set up huge barriers to entry. True reform will require compromise that can only be had when the fundamentalists on both sides can find common ground. The attached notes from one of the previous groups meetings clearly show that we have yet to come to terms on the same issues that we faced then.

Ultimately, it's not about good planning, design, environmental protection, economic development or quality of life. We all want that. It's about local fear. Fear of overburden local budgets, schools and infrastructure. If they release any of their current power they are nervous about the results.. As an example, the concept of a more prominent regional role instead of, not in addition to, the local process was not warmly received at our last meeting. I also don't believe in a totally voluntary buy in. I can't imagine there being enough carrots in the basket to assure meaningful reform on a voluntary basis. This is why diverse planning is so essential. If you can broaden the tax base by including multiuse property you take the impact off of the local infrastructure and municipal budgets. This kind of change will take leadership from all interest groups who must stand behind the need for change.

If the issues that we're wrestling with were under the control of planners who could make educated decisions based on facts, we wouldn't be here today. Unfortunately most planning and zoning is administered by volunteer non professionals with by laws passed by town meetings based on emotion without an appreciation of the real impacts of their decisions. Based on a general belief that large lots preserve open space, adherence to most zoning by-laws in the Commonwealth promotes sprawl. Consequently, we have the ignominious honor of using more land per home than nearly every other state in the nation.

If, as all the recent data show and media report, the Commonwealth is truly in a crisis mode, losing population and its economic base, then it will take decisions that aren't

popular to resolve the problem. I believe that it is possible to create a system that maintains the ability of the community to control it's own destiny within the context of the greater good as well as provide for a transparent and definitive system of development controls. If we can't find consensus on how to achieve that, then the administration and the legislature will have to wrestle with solutions after all of the data has been vetted. No one else can do it.

The basics of 40A reform as we see it have already been discussed and need consensus before anything else productive can be done.

I suggest that they are:

1. A requirement (not recommendation) that all communities adopt a plan with a comprehensive zoning bylaw accompanying it (see below).
2. A requirement that all plans must meet a minimum standard for completeness that includes a variety of housing types and non-residential development to help balance the tax base. It need not be a "Comprehensive Plan" in the classical sense although comprehensive planning necessary to understand the impacts of land use decisions.
3. That among the standards for completeness is some connection to a regional plan and compliance with overall state goals.
4. That clear and transparent zoning and other town by laws be created forthwith, if not in conjunction with, to implement the plan. This should include a specific, reasonable; permit process which, if completed, results in the awarding of the necessary building permits.
5. That there be zones where a variety of uses can be permitted as of right subject to performance standards and governed by a clearly defined site plan review process.

Moreover, enabling legislation should provide a clear road map for our communities outlining not only the powers that they have but the responsibilities that come with them. As a part of the 1999 Zoning Reform Discussion Group in 1999, it was suggested that such a road map begins with the preamble. There were a number of suggestions made. Here was my contribution:

The purpose of the Zoning Act is to authorize the community to regulate land uses in order to:

- 1. Promote the educational, cultural, economic and general welfare of the community**
- 2. Enable comprehensive community planning so that communities may develop in ways consistent with their visions and needs**
- 3. Balance private property rights with the Common Good**

- 4. Provide housing opportunities that reflect the needs of the community**
- 5. Preserve and protect natural resources**
- 6. Ensure the efficient use of land and water resources**
- 7. Facilitate the provision of municipal services and amenities**
- 8. Encourage the preservation and protection of buildings, sites and districts of historic or cultural interest**
- 9. Sustain the economic viability of the community**
- 10. Recognize the position of the community and its impact on the region of which it is a part and of the Commonwealth as a whole.**

The location of appropriate areas is a clinical exercise depending on the values that we subscribe to. One size will not fit all and local selection should be respected in this arena. If they have developed a plan that meets both their and the Commonwealth's needs then the appropriate areas will be identified where needed. The 10 sustainable development principles are as good a guide as any and should be worked into the act as well.

Form based zoning, an alternative to the Euclidian model that we live with, is a tool that may give people a higher degree of comfort that what they envision will actually end up looking like the language in the by laws. Zoning is, after all, what you see. There is an excellent paper on the two that can be downloaded from:

<http://scholar.lib.vt.edu/theses/available/etd-05122004113700/unrestricted/BurdetteFINALmajorpaper.pdf> .

In addition, the "Smart Code & Manual", a short & easy read on form-based zoning is available via email that we can send out to the entire committee as a pdf document.

To: Chapter 40(A) Discussion Group
Fm: John Stasik

Re: Summary notes for June 19, 2000 meeting re Section 6

Attending: R. Anderson, S. Bernstein, L. Duncan, M. Gilbert, J. Lacy, A. Paulsen, J. Russell, K. Sferra, R. Sturgis, J. Witten, D. Wluka

The discussion focused exclusively on the best way to approach changing Section 6. Section 6 protects the vested property rights of individuals who own property that is subject to a zoning change. Massachusetts has among the broadest statutory protection of vested rights of any state in the union. The use and zoning of the land that is in place at the time of the public hearing for the proposed zoning change is grand fathered for eight years in some cases.

The practical impact of these first few lines of Section 6 is to ensure that even the slightest hint of a proposed zoning change causes property owners to file a plan for the allowed use of the property in order to freeze the zoning that is currently in place for the next eight years.

The obstacle created by these few words in Section 6 is to suppress any long term planning which includes a zoning change. Other states require that the use and zoning is frozen only if a building permit is issued for that use and zoning by the time the public hearing for a zoning change is held.

A still more perplexing problem is that the same conundrum applies should word get out that there is a public hearing to be held at the State House to tighten up on grandfather. Every property owner in the state will file a plan to freeze their zoning..

Section 10, which stipulates the criteria necessary to grant a variance, is too strict. In fact, it is impossible to get a variance using these criteria. – therefore – the impact has been that all requests for variances in many communities are permitted rather than not permitting any variances.

This inability to plan (and to allow a reasonable escape route for landowners in Section 10) is the major problem with Section 6 and must be changed. Some suggest starting over with an entirely new “vested rights” protection statute, others suggest a more piecemeal approach.

If we start over, we must make some basic decisions:

1. Who should get vested rights protection? How much protection and for how long?
2. How much of the protection is state mandated, how much is left to local control?
3. Zoning should be consistent with a plan which would eliminate at least some of the vested rights problems, but Massachusetts doesn't require a plan, so in effect, zoning is the plan and any subsequent changes in zoning are piecemeal, unpredictable, and always controversial. Should Massachusetts require a plan?
4. or... if a community develops an approved plan, the state authorizes the community to
 - Relax variance standards
 - Impose impact fees
 - Cluster residential development
 - Impose development agreements
 - Remove the preliminary planning process
 - Remove ANR
 - Other
 - Put another way: A community must establish a rational zoning and planning policy to manage growth similar to Executive Order 418 and the components of the APA Growing Smart model if the community wants flexibility in its zoning and access to certain funding sources.
5. From all of the protections that now exist, what is to be left in the statute, what removed?
6. Can Massachusetts suspend the conditions in Section 6 for two years while communities plan? (A two year moratorium on Section 6)
7. What incentives will be in place to encourage local communities to plan?
8. How are the changes to be made at the state level – who gets involved?
 - Ad hoc committee of interested parties with volunteer drafting similar to this committee.
 - A legislative commission with paid staff.

What strategy needs to be developed to convince the legislature to require communities to develop a plan? This is viewed as an unfunded mandate by some. There did seem to be a consensus among those attending that if a community develops a plan, they would be granted relief from Section 6 and be permitted to engage in more flexible zoning options.

Sweeping changes to 40(A) Section 6 would have to include certain aspects of Section 10 plus all of Chapter 41 on subdivision control which is where all the current planning language is located. Such sweeping changes require:

- Incentives for community compliance
- State office for planning
- Determining how vested rights are protected by becoming part of the plan.
- Some state imposition of a planning statute
- State funding for communities to develop a plan

In summary:

1. Embark on a process to fundamentally change how the statute protects vested interests. Section 6 is out of balance with insufficient latitude given to communities to plan changes.
2. Provide communities relief from Section 6 plus zoning and development options if they develop an approved plan.
3. Decide those vested protections that remain and how much latitude to give the localities?
4. Provide more funding for communities to plan.
5. Establish a new office of planning.
6. Eliminate Section 6 and replace with a new planning statute.
7. Establish a "Commission" to realize this goal or continue with an active volunteer committee.
8. If we stay piecemeal, then a good starting point is Jeff Lacy's list of 2/15/00.

I am interested in your thoughts on how to procede. How sweeping need we be? How practical? How precise? How much carrot, how much stick? So much to do...so little time. So many communities are stuck without knowing how to make zoning changes, while we all sit around trying to figure out what to do next. There seems to be little political will to change the statute to enable communities to change their land use.

I am willing to discuss this further and meet again on Wednesday August 2nd at 10AM in room 348 of the State House. Before then, I'd like to have a plan for making changes to Chapter 40(A) Sections 6 and 10 and Chapter 41 where necessary. I need to talk to you individually, I need some ideas.

July 6, 2000